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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-I, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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A CRITICAL ANALYSIS ON HARISH CHANDRA V.

CHANDRA SHEKHAR (AIR 1977 ALL 44)

Author By- Ravindranath Chowdary Namburu

3rd Year Law Student At Symbiosis Law School, Hyderabad.

INTRODUCTION AND SCOPE

Importance and relevance of property is irrefutable in today's India. Property related disputes dominate the courts and have a higher level of interest in public. Property is regarded as an important aspect in socio-economic life of an individual.¹

There are different ways to transfer or convey the property. Various legislations govern the transfer of title depending upon the mode of conveyance. The Transfer of Property Act, 1882 is the basic legislation which governs the transfer of title between living persons only. The provisions of the act also include transfer of immovable property and some of movable property barring few exceptions. Mortgages, Lease, Gift and many more are included in the act where we would be discussing certain provisions and rights of mortgagor and mortgagee with respect to the case of Harish Chandra v. Chandra Shekhar.²

Where the main issue was raised on disputed house owned by Smt. LaxmiBahu. The house was mortgaged in favour of Ram Sumer for some amount. When LaxmiBahu expired, the property which was in dispute was given to her daughter Smt. Kalawati as "stridhan." As she has no interest on the property she relinquished her rights in favour of her three brothers by executing a deed of release. Two of three brothers who were not interested in the above property, relinquished their rights in favour of the only remaining brother who in turn became the sole mortgagor of the property.

The dispute here was whether the sole mortgager is entitled to redeem the mortgaged property from the mortgagee. There were a lot of allegations from mortgagee's side alleging that the sole mortgagor had relinquished his rights in favour of mortgagee and it was a mere sale and took a shape of usufructuary mortgage. It is therefore the defendant's second appeal against the

¹DR. POONAM PRADHAN SAXENA, THE TRANSFER OF PROPERTY ACT 13 (Lexis Nexis Butter Worths, 2nd ed. 2011).

² 1976 (2) ALR 228.

decree of the trial court. Detailed facts of the case are to be discussed together with the concepts pertaining to it. As the trial court judgment was unavailable in online court records, the case study was done on the basis of the judgment of Supreme Court.

The scope of study is confined to the concepts pertaining to the above case and the rights of the mortgagor and the mortgagee of usufructuary mortgages, deeds of release and relinquishment, execute to redeem property under mortgage, principles of mortgage suits. All the concepts with respect to section 5 of The Transfer of Property Act, 1882 and analysis of various cases mentioned in the above case. Literature reviews on the relevant topics have been reviewed in order to create a better picture of the case study.

RESEARCH OBJECTIVES

1. To analyse the judgment of the court
2. To understand the concept of deed of relinquishment
3. To comprehend the brief facts of the case
4. To understand the right of the sole mortgagor to redeem the property
5. To know the findings of different cases mentioned in the above case

RESEARCH QUESTIONS

1. What were the rulings of the Supreme Court in the above case?
2. What is a Usufructuary mortgage and its types?
3. Whether the relinquishment entitles plaintiff to redeem the disputed property?
4. Whether the deed of release is in the nature of deed of conveyance?
5. Who is the ‘mortgagor’ and the ‘mortgagee’ in this case?
6. What is the concept of pre-emption with respect to the usufructuary mortgages?
7. Whether the sole owner i.e. *stridhancan* transfer the property to her brothers by the deed of release?

RESEARCH METHODOLOGY

In order to meaningfully get answers to the research questions and accomplish the objective, the researcher has combined doctrinal, analytical and empirical research methodology to get a complete and confirmed result. The methodology of the research differs according to the subject. The study is doctrinal in nature. For the present work, doctrinal method is found to be suitable because it involves theoretical analysis of various concepts. Since the area is exclusively related to

the property law, all standard tools of doctrinal research are applied and adopted the techniques of research according to the contextual requirements. The researcher has gone through various books, articles and legal databases which have helped in acquiring lot of information and knowledge about the present research topic.

LITERATURE REVIEW

Abhisek Agarwal,³in his article on lessor's transferee, mentioned that if a property is mortgaged by the mortgagor If the landlord used a usufructuary mortgage to secure the property, the usufructuary mortgagee would be entitled to rent and income earned in his own right and on his own account. In the absence of any negation of such rights under the rant act, a mortgagee in possession will have the same right as the owner to pursue recovery of possession of the leased premises from a tenant for his own bona fide requirements of use. Accordingly, the plaintiff and his co-sharers are entitled to rents and income earned by mortgaged property which was in dispute.

In the **official website of notaries of France**,⁴ it was mentioned about the concept of Donation (Gift with respect to Indian perspective) having the right of usufruct the property. The privileged rights of the owner are divided into two components. One is to usufruct i.e. to receive the rents and income made out of the property and bear the ownership i.e. to dispose of the property. This heritage technology allows the donor, not only to maintain the right to use and rent, but also to restrict the tax payable. The donor also has the right to pay the land. Bare property refers, depending on the beneficiary's age, to a percentage of the value of the whole property as defined by statute. The usufruct shall be extinguished on the death of the donor, to the advantage of donors who are therefore fully owned without taxes or any further formalities.In the same way the owner of disputed land Smt. LaxmiBahu passed away leaving the property to her daughter i.e. Smt. Kalawati to enjoy the rents and income arising out of the house.

Sneha Sharon Mammen,⁵ in her article explained about the procedure for surrender of property to another legal heir by one legal heir. According to her a co-owner of the property can relinquish his rights by executing a deed of relinquishment for smooth and clarity transfer of parental or ancestral property in favour of other co-owner or legal heir. She states that the person who is relinquishing

³ Abhishek Agrawal, *Right of Lessor's Transferee*, MANUPATRA, <http://manupatra.com/roundup/336/Articles/Right%20of%20Lessor%20Transferee.pdf>

⁴NOTAIRES DE FRANCE, <https://www.notaires.fr/en> (last visited Apr. 20th, 2021).

⁵Sneha Sharon Mammen (2020).

the deed must be compensated otherwise it turns irrevocable. The relinquishment deed must be registered in order to consider it as a legal proof of relinquishment. It is observed that stamp duty will be applicable to the part of property that is being relinquished. Accordingly, in the above case, the defendants 4, 5 and 6 have relinquished their rights in favour of plaintiff by a release deed as mentioned in the facts of the case. It was further alleged by the mortgagees that the transfer of property rights was not admissible by law.

Hathika v. P. Padmanabhan⁶ arose from a suit for redemption of mortgage. The defence by the mortgagee was that the document in question was a lease and not a mortgage and therefore the suit was not maintainable. It was pointed out that the nomenclature of the document was conclusive. In the instant case though it was styled as a usufructuary mortgage, the transaction was held to be an anomalous mortgage in view of the right conferred on the mortgagee to bring the mortgaged property to sale for realisation of the amount borrowed. The document is not a usufructuary mortgage simpliciter whereas it partakes the character of a simple mortgage also. Such a mortgage was, therefore, one coming under the category of anomalous mortgage. The rights and liabilities of the parties to an anomalous mortgage are to be determined by the contract as evidenced in the mortgage deed by virtue of section 98 of the Act. In the light of this the plea that the defendant mortgagee is a lessee of the building was unsustainable. The mortgagor was held entitled to enforce his right to get the mortgage redeemed. Accordingly, in the same case it can be observed that the mortgagees further alleged that the transaction between LaxmiBahu and Ram Sumer is merely a sale and was given a shape of usufructuary mortgage.

Y. Srinivas Rao,⁷ in his article relating to mortgaged suits he has explained about who are necessary and properties in a mortgaged suit. The question of who are all the necessary parties to be impleaded as party defendants in a mortgage suit is one of misjoinder or non-joinder of parties, not of jurisdiction. Both persons involved in the equity of redemption and all those who assert right and interest through the mortgagee should normally be necessary parties in a suit for redemption, foreclosure, or sale of mortgaged property brought by the respective parties to the mortgage, and Persons who claim adverse title dominant in any or all of the mortgaged properties but not from the mortgagor or mortgage are not required to be named as parties in a suit like this. However, the above rule is not rigid or absolute, and the court must consider whether such a course would cause inconvenience or uncertainty in each case, exercising its discretion judiciously and properly. In such circumstances, if the Court considers it reasonable, appropriate and sufficient in the interests of all

⁶ (1994) 5 SCC 672.

⁷ Srinivas Rao Y (2018).

the parties to decide on matters pertaining to the overriding title, the implication of such parties and the avoidance of multiplicity of disputes is not only right but even desirable. Accordingly, in this case it was alleged that after the death of Devi Charan i.e. respondent 1, all his heirs should have been impleaded and further questioned by the court whether the suit is bad for non-joinder of all the heirs.

DETAILED FACTS OF THE CASE

Going into the facts of the case, it is nothing but about allegations surrounding around the mortgaged property. The owner of the property (house) was Smt. LaxmiBahu who had executed a deed of mortgage with respect to the said property to Ram Sumer for mortgage amount of Rs. 2,500. Soon after executing the deed of mortgage, owner of the property Smt. LaxmiBahu passed away leaving behind 3 sons including the plaintiff and a daughter Smt. Kalavati, defendant no. 4. Defendant 1 and 2 are the successors of Ram Sumer and the suit which gave rise to this appeal had been filed by respondent no. 1. Following her mother's death, being the co-owner of the property, defendant 4, having no interest in the property, executed a deed of relinquishment in favour of plaintiff and her two brothers, defendants 5 and 6. Later, due to some unnoticed circumstances, defendants 5 and 6 relinquished their property rights by a deed of relinquishment in favour of plaintiff, making the plaintiff the sole mortgagor of the aforesaid property.

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When the suit was instituted against family of LaxmiBahu, they did not contest the suit resulting the case to proceed towards ex parte against them. Later, defendants 1 and 2 died during the pendency of suit leaving behind a written statement, stating that after the death of Smt. LaxmiBahu, the property has been devolved upon defendant 4 i.e. her daughter Smt. Kalawati alone. It was also stated that relinquishment of rights in favour of her brothers including the plaintiff by Kalawati does not feed any title and the defendants 1 and 2 denied the relinquishment deed executed in the favour of her brothers including plaintiff. Further the defendants 1 and 2 called the deed of mortgage as merely a sale in the nature of usufructuary mortgage and claimed that they have done improvements in the property and are entitled to expenses. And further pleaded that after the death of Devi Charan, all his heirs should have been impleaded.

The court framed the issues which are as follows:

1. Whether defendants 1 and 2 have done any improvements and are entitled to receive any expenses?
2. Whether plaintiff is entitled to receive any expenses?
3. Whether the deed is in the nature of usufructuary mortgage?
4. Whether the facts presented by defendants 1 and 2 are true and admissible?
5. Whether the sole mortgagor is entitled to redeem the mortgaged property?
6. Whether Smt. Kalawati had executed deed of relinquishment in favour of her brothers?

Following the detailed facts and important issues framed in the case, the decision taken by the Supreme Court will be discussed in the next part.

RULING OF SUPREME COURT

The Supreme Court in this case of mortgage, after investigating all the issues and going through evidence submitted by the parties, came to the decision that the aforesaid transaction of disputed house was a usufructuary mortgage and not a sale and the evidence and the allegations made by the appellant were false. The trial court further held that a deed of relinquishment was executed by Smt. Kalawati, defendant No. 4 in favour of her three brothers and by that the plaintiff became one of the mortgagors and entitled to sue and after the deed of relinquishment executed by defendants Nos. 5 and 6 in his favour he became the sole mortgagor. It also held that the original mortgagee or the appellants had not made any improvement and they are not entitled to any amount on that account. It rejected the plaintiff's plea that plaintiff has relinquished his rights in favour of defendant. On the above findings, the trial court decreed the plaintiff's suit for redemption on payment of Rs. 2,500.

The court found out that plaintiff and his co-sharer did not relinquish the right in favour of the defendants and is also a concurrent finding of fact which cannot be challenged in second appeal. It was, however, contended on behalf of the appellants that according to the case set up by the plaintiff himself in the plaint, Smt. Kalawati alone was entitled to succeed to the property in dispute which was the *Stridhan* of Smt. Laxmi Bahu. The plaintiff or his two brothers Chandrabhal and Chandra Shish did not inherit the property at all. It was argued that Smt. Kalawati being the sole owner of the property in dispute could certainly transfer this property to the plaintiff and his other two brothers. Following the decision of the court, the concepts referred to in the case will be

discussed overall.

CONCEPTS REFERRED TO THE ABOVE CASE

Usufructuary Mortgage

It is defined under section 58(d) of Transfer of Property Act, 1882. In this form of mortgage, the mortgagor gives the mortgagee express or implied possession of the mortgaged property and authorises him to keep it until the mortgage is paid off. He also authorises the mortgagee to receive the rent and income generated by the mortgaged property in lieu of interest, partially or entirely, or in payment of the mortgaged money, partially or entirely.

Rights Of Mortgagor And Mortgagee In Usufructuary Mortgage

In a usufructuary mortgage, the mortgagor has a right to redeem the mortgaged property, transfer the property and mortgagor rights to a third party, right to improve the mortgaged property, right to receive the rents and expenses arising out of the property, right to grant a lease, right to inspect and produce documents. It is to be noted that only few rights are transferred to the mortgagee. In the above case, Plaintiff being the sole mortgagor has a right to redeem the property and entitled to receive the costs and expenses out of mortgaged property. Coming to the rights of mortgagee, he has a right to transfer the property if the mortgaged money is not paid in time, has a right to claim any charges or taxes paid by the mortgagee.

Procedure Of Deed Of Relinquishment (By Deed Of Release)

Relinquishment deeds are legal documents that allow a person to give up their legal rights to a property to another person with their permission. A deed of release, also known as a deed of re-conveyance, on the other hand, is a legal document that is used to release one's claims against a specific property. A deed of release is a legal document that relieves the parties of all prior obligations. There isn't much of a difference between the two. While the sense in which the terms are used can differ at times, the basic definition of the two terms (relinquishment deed and release deed) is the same.

A release deed, on the other hand, can be enforced against someone who previously had a vested interest in the land, whether or not they were coparceners. When an individual applies for a mortgage loan, the bank takes full ownership of a property that the homebuyer already owns as

collateral. The mortgage is returned to the owner along with a release deed until the loan is paid in full. Via the mortgage release deed, the bank relinquishes temporary ownership of the mortgage to its owner. It is not mandatory for the parties involved in a mortgage release deed to be relatives or coparceners.

Right of Redemption

The right to redemption, as established by section 60 T.P. Act, is a powerful tool for protecting a mortgagor's interests. Under Indian law, the mortgagor is the owner who has relinquished any ownership rights, and the right of redemption is the right that he exercises as a result of his residuary ownership to reclaim what he has relinquished. However, in India, this right to salvation is a contractual one. A right of redemption is a function of an existing mortgage that lasts as long as the mortgage does. According to recent judicial precedents, dismissal of an earlier suit for redemption, whether abated, withdrawn, or in default, does not preclude the mortgagor from bringing a second suit for redemption as long as the mortgage remains in force. This privilege can only be terminated by the parties themselves or by a court order.

CASES REFERRED TO IN THE JUDGMENT

Studying the above judgment, it was comprehended that 1. *KuppuswamyChettiar vs. A.S.P.A. ArumugamChettiar and Ors.*⁸ and *HutchiGowder v. BheemaGounder*⁹ were the cases referred to in the following judgment. While the apex court in this case found that the first referred case supports the contention of the plaintiff while second case supports the contention of appellants. In the case of *KuppuswamyChettiar vs. A.S.P.A. ArumugamChettiar and Ors.*, The registered release deed was executed in presence of more than two witnesses without consideration. The case questioned whether the deed had effectively passed the title or transfer title to one having no title. Further, it questioned whether deed could enlarge interest of release. The Court ruled that the release deed clearly showed an intention to transfer title. Further, the deed was in favour of a person having no interest in the property and it could not take effect as an enlargement of an existing estate. Moreover, a deed of release could transfer title to one having no title before the transfer. Accordingly, as we take role of Smt. Kalawati, she has left no interest in the disputed property and hence relinquished her rights in favour of her brothers who have no title before the

⁸ AIR 1967 SC 1395.

⁹ AIR 1960 Mad 33.

transfer.

Though Supreme Court had referred to *HutchiGowder v. BheemaGounder*, it was *Kuppuswami v. Arumugam* which the court decided to support the arguments of the plaintiff as the madras case quoted on behalf of appellant which cannot be regarded as good law. In view of the above cases, the court held that a deed of release can confer the title to one having no title before the transfer.

FINDINGS AND DISCUSSIONS

In this case, as the judgement is challenging to comprehend, the researcher decided to discuss the timeline of the transactions and parties involving in the case with help of table.

Firstly, moving towards to the parties,

Smt. LaxmiBahu (owner)	Ram Sumer
Defendant no. 3 (husband deceased)	Devi Charan (Def. no. 1)Son of Ram Sumer
Smt. Kalawati (Def. no. 4)	Devi Prasad (Def. no. 2)Son of Ram Sumer
Chandra Shekhar (Plaintiff)	
Chandrabhal (Def. no. 5)	
Chandra Shish (Def. no. 6)	

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Therefore, it was found that suit gave rise from Devi Charan and followed by his death it was followed by his son, Harish Chandra.

Secondly, the timeline of the transactions are as follows,

1. 10-1-1930 = Smt. LaxmiBahu mortgaged a house to Ram Sumer
2. 30-1-1930 = Smt. LaxmiBahu passed away
3. 10-12-1947 = Smt. Kalawati relinquished her rights in favour of three brothers
4. 16-1-1950 = Def. 5 and 6 relinquished their rights in favour of plaintiff
5. 7-8-1971 = Judgment given by trial court
6. 27-1-1976 = Judgment given by appellate court

Therefore, by the timeline of the case, it can be observed that the case was under trial for almost 25 years from the date of last transaction of relinquishment.

Though it was found that the defendants 5, 6 and plaintiff have a pre-existing title after the death the LaxmiBahu, Smt. Kalawati can still transfer her rights to her brothers because she left

with no interest in the property and regarded the plaintiff to be the owner or mortgagor of the property.

CONCLUSION

As a result of present case analysis, all the questions and objectives have been met and carefully presented in the paper. After 25 years of constituting the suit of mortgage, it was decided by the apex court that the plaintiff is the soul mortgagor and has a right to receive compensation if any. The release deeds executed in favour of the plaintiff lawful as considered in the case of *Kuppuswami v. Arumugam*. The court further held that the mortgage was a usufructuary mortgage by denying the allegations made by the appellants. Various aspects pertaining to the case have been discussed and presented in proper manner. As the judgment of the court was difficult to comprehend, the researcher has given his best in analysing and presenting it in easy way. Therefore, it is stated that all the matter presented in this paper is subjected to the scope and all above facts are true to the knowledge of the researcher.

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